

Present
Mr. Justice Sheikh Abdul Awal
Criminal Revision No. 1374 of 2006

Abul Fazal Munshi

.....Convict-Petitioner.

-Versus-

The State and another.

.....Opposite parties.

None appears

.....For the Petitioner.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

..... For the Opposite party.

Heard on 18.02.2024 and Judgment on 22.02.2024.

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 06.09.2006 passed by the learned Additional Sessions Judge, Gopalganj in Criminal Appeal No. 11 of 2005 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 09.07.2003 passed by the learned Magistrate, First Class, Gopalganj in C.R No. 134 of 2000 convicting the petitioner under section 379 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 1,000/- (one thousand) should not be set-aside

and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts briefly are that on 13.04.2000 one, Sikder Nazrul Islam, Tashilder, Paikerdanga U.P. land office, Gopalganj as complainant filed a petition of complaint in the Court of Magistrate, First Class, Gopalganj against the convict petitioner under section 379 of the Penal Code stating, inter-alia, that the petitioner illegally cut away 20,000 square feet earth from the canal under plot No. 865 of Paikerdanga Mouja causing damage amounting to Taka 10,000/- of the Government.

On receipt of the petition of complaint, the learned Magistrate examined the complainant under section 200 cr. p. c. and took cognizance under section 379 of the Penal Code fixing next date 15.05.2000.

Ultimately, the Trial was held in-absentia against the accused-petitioner as the accused petitioner never appeared before the Court.

At the trial, the complainant side examined as many as 4(four) witnesses and exhibited some documents to prove his case, while the defence examined none.

On conclusion of trial, the Magistrate, First Class Gopalganj by his judgment and order dated 09.07.2003 found the accused petitioner guilty for the offence under section 379 of the Penal Code and sentenced him thereunder

to suffer rigorous imprisonment for a period of 1(one) year and also to pay a fine of Taka 1,000/- (one thousand).

Against the aforesaid judgment and order of conviction and sentence dated 09.07.2003 the accused-petitioner preferred Criminal Appeal No. 11 of 2005 before the learned Sessions Judge, Gopalganj, which was subsequently transmitted to the Court of the learned Additional Sessions Judge, Gopalganj for disposal, who by the impugned judgment and order dated 06.09.2006 dismissed the appeal and affirmed the judgment and order of conviction and sentence dated 09.07.2003 passed by the learned Magistrate.

Aggrieved convict petitioner then preferred this Criminal Revision and obtained the present rule.

No one found present to press the appeal on repeated calls despite of fact that this criminal revision has been appearing in the list for hearing since long.

In view of the fact that this petty old case has been dragging before this Court for near about 17 years relating to 1 year sentence, I am inclined to dispose of the same on merit on the basis of the evidence and materials on record.

Ms. Shahida Khatoon, the learned Deputy Attorney-General appearing for the State-opposite party No.1, supports the judgments of 2 Courts below, which were according to her just, correct and proper. She submits that in

this case all the witnesses proved the case as to the time, place and manner of occurrence and thus, the prosecution proved the guilt of the accused petitioner beyond reasonable doubt.

Having heard the learned Deputy Attorney General and having gone through the materials on record, the only question that calls for my consideration in this Rule is whether the Courts below committed any error in finding that the accused-petitioner guilty of the offence under section 379 of the Penal Code.

On scrutiny of the record, it appears that on 13.04.2000 one, Sikder Nazrul Islam, Tashilder, Paikerdanga U.P. land office, Gopalganj as complainant filed a petition of complaint in the Court of the learned Magistrate, First Class, Gopalganj against the convict petitioner under section 379 of the Penal Code stating, inter-alia, that the accused petitioner illegally cut away 20,000 square feet earth from the canal under plot No. 865 of Paikerdanga Mouja causing damage amounting to Taka 10,000/- of Government.

It further appears that in this case trial was held in absentia. At the trial the complainant examined as many as 4 witnesses out of which the complainant himself was examined as PW-1, who in his deposition stated that on 10.01.2000 at 10:00 a.m. accused Abul Fazal Munshi without taking any permission cut away 20,000 square feet earth from the canal under plot No. 865 of Paikerdanga

mouza causing damage amounting to Taka 10,000/- of the Government. This witness also stated that on getting order from the authority he filed the case. This witness was not cross-examined as the trial was held in absentia. PW-2, Sirajul Chowdhury, Assistant Tahsilder, PW-3, Keramat Ali, M.L.S.S and PW-4 Faruk Ahmed, all these witnesses in their respective deposition corroborated the evidence of PW-1 in respect of all particulars.

On and analysis of the above evidence of PWs, it appears that prosecution witness Nos. 1-4 in their respective evidence proved the case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused petitioner beyond reasonable doubt.

On a close perusal of the impugned judgments and orders of 2 courts below, I find no flaw in the reasonings of the two Courts below or any ground to assail the same. It is found that the trial Court below on due consideration of the entire evidence and materials on record found the accused-appellant guilty under section 379 of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 1,000/- (one thousand).

In view of my discussion made in the foregoing paragraph it is by now clear that the instant Rule must fail.

However, considering the law, facts and circumstances of the case as discussed above, particularly the fact that the

convict-petitioner has already suffered his sentence to some extent and the petitioner has already faced the agony of the protracted prosecution and suffered mental harassment for a long period, I think that, the ends of justice, will be met in the facts and circumstances of the case if his sentence is reduced to the period already undergone.

Learned Assistant Attorney General has, of course, been able to defend this case on merits but practically has nothing to say insofar as reduction of sentence imposed upon the appellant is concerned.

Considering the totality of circumstances, the conviction of the appellant is hereby affirmed. The sentence awarded by the trial Court is hereby modified.

The Rule is, consequently, is discharged. The sentence of the petitioner is reduced to the period of sentence already undergone. The petitioner, Abul Fazal Munshi is discharged from his bail bond.

Send down the lower Court records at once.